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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,076	12/31/2001	David Kaufman	KCC4803 (K-C No. 16,436)	9166
321	7590	01/29/2004	EXAMINER	
SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			RHODE JR, ROBERT E	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 01/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/039,076

Applicant(s)

KAUFMAN ET AL.

Examiner

Rob Rhode

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-27, 33, 39, 41- 48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-27, 33, 39, 41- 48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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**DETAILED
ACTION**

Response to Amendment

Applicant amendment of 1-6-04 amended claims 24, 33, 39, 41, 42, 43 and 44 as well as added new claims 45 - 48.

Currently, claims 24 - 27, 33, 39, 41, 42, 43, 44 and 45 - 48 are pending.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 24 - 27, 33, 39, 41, 42, and 44 - 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over, and further in view of "Who Wants to Market a Millionaire?"; Rosenspan, Alan; Direct Marketing; March 2001; page 45 (hereafter referred to as Direct Marketing) in view of Froseth (US Patent Application Publication 2002/0004749A) and further in view of Schilling (US Patent Application Publication 200310035138 A1).

Regarding claim 24 and related claims 33, 41, 42 and 44 (currently amended) as well as dependent and related claims 39, 45 - 48, the combination of Direct

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Marketing, Forseth and Schilling teach a method in which a manufacturer produces a plurality of custom tissues within a custom package for a consumer, the method comprising the manufacturer:

Where Direct Marketing teaches receiving information from the consumer information relating to a first plurality of options of tissue feature of a plurality of customer tissues (Page 2, lines 42 - 44).

However, Direct Marketing does not specifically disclose and teach a method receiving the information from the consumer via a communications network. Nor does Direct Marketing specifically disclose and teach providing said information to a production machine linked communications network and configured to the information provided by the consumer via the communications network, said production machine configured to produce custom tissues including any one of the first plurality of options of the tissue feature; and producing by the production machine the custom tissues in the package therefor as desired by the consumer and in accordance with the information received from the consumer such that the produced includes custom tissues have the first option.

On the other hand, Froseth does teach providing this information via a communications network (see at least Figure 1). In addition, Froseth does teach a method providing said information to a production machine linked

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communications network and configured to the information provided by the consumer via the communications network, said production machine configured to produce custom tissues including any one of the first plurality of options of the tissue feature (see at least Abstract, Page 6, Para 0086, Page 7, Para 0093 and Figures 1, 3A and 3B); and

producing by the production machine the custom tissues in the package therefor as desired by the consumer and in accordance with the information received from the consumer such that the produced includes custom tissues have the first option (see at least Page 10, Para 0116 and Figures 1 and 3A). Please note and as stated in the previous rejection, the applicant is applying for a patent to purchase and customize online products such as absorbent paper products/custom facial tissue as well as customize packaging of that product(s).

In that regard and for examination purposes, the kind or type of product that one is customizing is given little patentable weight. The kind or type of product is given little patentable weight because the claim language limitation such as "facial tissue and/or absorbent paper products" is considered to be non-functional descriptive material, which does not patentably distinguish the applicant's invention from the cited references in this and the previous rejection. Thereby, the non-fictional descriptive material is directed only to the type/kind of product (i.e. absorbent paper/facial tissue) and does not affect either the structure or method/process of Froseth, which leaves the method and system unchanged.

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Moreover:

regarding Claim 25, Froseth teaches a method wherein the communications network is a computer network, and wherein receiving includes receiving said information from the consumer over the computer network via a computer server (see at least Page 6, PARA 0086 and Figures 1 and 2A).

regarding Claim 26, Froseth teaches a method wherein the communications network is a telephony network, and wherein receiving includes receiving said information from the consumer over the telephony network via a telephone attendant (Page 6 and 7, PARA 0086) and (27) wherein said telephone attendant is an automated attendant (Page 6 and 7, PARA 0086).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the method of Direct Marketing with the method and system of Froseth to have enabled providing said information to a production machine linked communications network and configured to the information provided by the consumer via the communications network, said production machine configured to produce custom tissues including any one of the first plurality of options of the tissue feature; and producing by the production machine the custom tissues in the package therefor as desired by the consumer and in accordance with the information received from the consumer such that the produced includes custom tissues have the first option. In that regard, the

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consumer will have a method and system that provides an online site, which incorporates all facets of a transaction for selecting, purchasing, producing and delivery of an absorbent paper product from their home and thereby allow the consumer all these functions without leaving their home. This will in turn save the consumer time and cost associated with on site shopping at a store or mall, which will increase the probability that they will be more satisfied as well increasing the probability that they will shop at the site in the future.

The combination of Direct Marketing and Forseth does disclose and teach substantially the applicant's invention.

While Forseth does address packaging (see at least Forseth Figure 17), the combination does not specifically disclose and teach method and system relating to a second graphical option of a second plurality of graphical options of a package feature of the package;
and configured to produce custom packages including any one of the second plurality of options of the package feature;
and the produce package has the second graphical option.

On the other hand, Schilling teaches a method and system relating to a second graphical option of a second plurality of graphical options of a package feature of the package (see at least Abstract, Page 1, Para 0006, Page 4, Para 0054 and 0055 and Figures 2A, 12 and 14);

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and configured to produce custom packages including any one of the second plurality of options of the package feature (see at least Abstract and Figures 2A, 12 and 14);

and the produce package has the second graphical option (see at least Abstract and Page 1, Para 0003 and 0005).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have provided the combination of Direct Marketing and Froseth with the method and system of Schilling to have enabled relating to a second graphical option of a second plurality of graphical options of a package feature of the package; and configured to produce custom packages including any one of the second plurality of options of the package feature; and the produce package has the second graphical option - in order to include packaging design and selection. In this manner, the consumer's satisfaction with the site given these additional packaging features will increase. This increased satisfaction will increase the probability that the consumer will return for additional shopping as well as recommend the site to others.

Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Direct Marketing, Forseth and Schilling and further in view of Wilmott (US 200210082745 A1).

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The combination of Direct Marketing, Froseth and Schilling disclose and teach substantially the applicant's invention as recited in the previous claims.

However, the combination does not specifically disclose and teach a production machine including a fragrancier.

On the other hand, Wilmott teaches a production machine including a fragrancier (see at least Abstract, Page 4, Para 0047 and Figure 1).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the combination of Direct Marketing, Froseth and Schilling with the method and system of Wilmott to enable the production machine including a fragrancier - in order to provide the consumer with more optional features and additional access places other than the home and thereby increasing their satisfaction as well increasing the probability of additional product sales.

Response to Arguments

Applicant's arguments and amendment see Paper No. 13, filed 1/6/2003, with respect to Claim 33 and the 35 USC 101 rejection was appropriate. As a result of amending claim 33, the 35 USC 101 rejection has been withdrawn.

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Applicant's arguments filed 01-06-2004 have been fully considered but they are not persuasive.

Applicant argues that none of the prior art discloses or teaches that the product has features selected by the consumer via a network and the packaging therefor has graphical features selected by consumer via a network.

In regards to these arguments and as noted in the above rejection, Forseth discloses and teaches that the product has features selected by the consumer via a network (see at least Figures 1, 2A, 3A and 313). Whereas, Schilling discloses and teaches selecting via a network the packaging with graphical features (see at least Figures 1, 2A, 12 and 14). In that regard, the combination as per the rejection – does disclose and teach that the product has features selected by the consumer via a network and the packaging therefor has graphical features selected by consumer via a network. Moreover and regarding the previous rejection, it was stated that the ability to shop online and customize a product by selecting several features was old and well known at the time of the applicant's invention as well as the ability to manufacture, package and deliver the customized product and package for the shopper. In that regard, if the applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). MPEP 2144.03 Reliance on Common Knowledge in the Art or "Well Known" Prior Art. In view of applicant's failure to adequately traverse official notice, the preceding old and well known statement is admitted prior art.

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Applicant argues that while Froseth does disclose customized packaging, the reference does not disclose and teach that the graphics of the packaging maybe selected by the consumer.

In regards to this argument and as noted above and in the rejection, Schilling was the reference, which teaches that the graphics of the packaging maybe selected by the consumer (see at least Figures 1, 2A, 12 and 14)

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

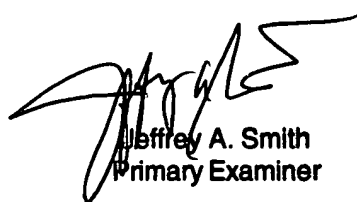
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rob Rhode whose telephone number

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is 703.305.8230. The examiner can normally be reached on M-F 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on 703.308.3588. The fax phone number for the organization where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.306.1113.



Jeffrey A. Smith
Primary Examiner

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